

**REMARKS**

Entry of the foregoing and reconsideration of the application identified in caption, as amended, pursuant to and consistent with 37 C.F.R. §1.114 and in light of the remarks which follow, are respectfully requested.

By the above amendments, claims 8, 21 and 22 have been canceled without prejudice or disclaimer. The subject matter of claim 8 has been incorporated into each of independent claims 1 and 29. Claims 1 and 29 have also been amended to recite that the mushrooms are contacted with the first aqueous solution for about 15 to 45 seconds, and the mushrooms are contacted with the second aqueous solution for about 15 to 45 seconds. Support for such amendments can be found in the specification at least at page 8, paragraph [0019], and page 11, paragraph [0026], taken in connection with the examples. See M.P.E.P. §2163.05(III). Claims 1 and 29 have further been amended to recite that the mushrooms are continuously transported through a first treatment area in which step (a) is conducted, and a second treatment area in which step (b) is conducted. Support for such amendments can be found in the specification at least at pages 14-15, paragraphs [0035]-[0037]. Claim 7 has been amended in a manner consistent with the above amendment of claim 1. Claim 23 has been amended to depend from claim 1 in light of the cancellation of claim 22. Entry of the above amendments is proper at least because a Request for Continued Examination is being filed herewith. See 37 C.F.R. §1.114.

In the Official Action, claims 1, 3-10 and 13-33 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent Application Publication No. 2003/0198716 (*Hankinson et al*) in view of U.S. Patent No. 5,912,034 (*Martin et al '034*), or *Martin et al '034* in view of *Hankinson et al*, further in view of U.S. Patent No. 4,814,193 (*Shenouda et al*), U.S. Patent No. 3,328,178 (*Alderton*), Great Britain Patent Document No. 1,510,883, and

U.S. Patent No. 1,098,006 (*Allen*), further in view of U.S. Patent No. 6,500,476 (*Martin et al '476*), U.S. Patent No. 5,919,507 (*Beelman et al '507*), U.S. Patent Application Publication No. 2003/0170354 (*Beelman et al '354*), U.S. Patent No. 4,814,192 (*Sapers et al*), U.S. Patent No. 4,011,348 (*Farrier et al*), and U.S. Patent No. 6,159,512 (*Reyes*). Applicants respectfully submit that the claims as amended are non-obvious over the applied art for at least the following reasons.

*Hankinson et al* and *Martin et al '034* do not disclose or suggest each feature recited in independent claims 1 and 29. For example, *Hankinson et al* and *Martin et al '034* do not disclose or suggest that the mushrooms are contacted with the first aqueous solution for about 15 to 45 seconds, and that the mushrooms are contacted with the second aqueous solution for about 15 to 45 seconds, as now recited. As discussed in the specification, Applicants have discovered that employing the claimed contact time ranges can result in attaining an adequate degree of antimicrobial action, while reducing or avoiding any substantial adverse effect on the texture and/or flavor of the mushrooms due to prolonged exposure to the first and second aqueous solutions. Page 8, paragraph [0019]. In this regard, the Patent Office has taken the position that it would have been obvious to optimize *Hankinson et al* and *Martin et al '034* to arrive at the previously claimed contact time range. Official Action at page 3. However, neither *Hankinson et al* nor *Martin et al '034* have any recognition or suggestion that prolonged contact with the first and second aqueous solutions can have an adverse effect on the texture and/or flavor of mushrooms, i.e., that the contact time is a result effective variable of the texture and/or flavor of mushrooms. As such, it would not have been obvious to optimize *Hankinson et al* and *Martin et al '034* to arrive at the claimed contact time ranges. See M.P.E.P. §2144.05(II)(B).

*Hankinson et al* and *Martin et al '034* also fail to disclose or suggest that the mushrooms are continuously transported through a first treatment area in which step (a) is conducted, and a second treatment area in which step (b) is conducted, as recited in claims 1 and 29. In stark contrast with such features, in the examples set forth in *Martin et al '034*, it appears that the potatoes are contacted with treatment solutions in batch process steps. Applicants have discovered that by continuously transporting the mushrooms through the first and second treatment areas in accordance with aspects of the claimed invention, various advantages can be realized such as, for example, improved efficiency of the mushroom preservation process and, notably, improved and convenient control over the contact time with the first and second aqueous solutions. *Hankinson et al* and *Martin et al '034* have no recognition of such continuous transport of mushrooms through first and second treatment areas nor the advantages associated therewith.

Further, the disclosures of *Hankinson et al* relied on by the Patent Office do not disclose or suggest the use of a pH-adjusting agent comprising citric acid, as is now recited in claims 1 and 29.

The secondary applied art fails to cure the above-described deficiencies of *Hankinson et al* and *Martin et al '034*. The Patent Office has noted that the secondary applied art is relied on either "as further evidence of acid treatment followed by a basic, neutralization treatment" or "to teach the conventionality of neutralizing an acid treatment." Official Action at page 6. It would not have been obvious in view of the secondary applied art to arrive at the claimed method, in which the mushrooms are contacted with the first aqueous solution for about 15 to 45 seconds, the mushrooms are contacted with the second aqueous solution for about 15 to 45 seconds, and the mushrooms are continuously transported through a first

treatment area in which step (a) is conducted, and a second treatment area in which step (b) is conducted.

Furthermore, Applicants reiterate that *Hankinson et al* **teaches away** from being combined with the secondary applied art in the manner proposed by the Patent Office. While *Hankinson et al* discusses the use of highly basic or acidic treatment solutions, it is only to disparage such practice by pointing out the technical problems, risks and disadvantages associated therewith. Paragraphs [0007], [0008] and [0015]. This is further apparent in view of the fact that the processes of *Beelman et al '507* and *Martin et al '476* are explicitly mentioned and disparaged by *Hankinson et al*.

The Examiner has taken the position that "a 'teaching away' urging usually requires that the primary reference would indicate the modification would not work." Official Action at page 4. Contrary to this assertion, however, a disclosure of the inoperability of the proposed modification is not required to show a teaching away. Rather, prior art disclosures which "criticize, discredit, or otherwise discourage" the proposed modification constitute a teaching away. See, e.g., *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). Quite clearly, in view of the nature of *Hankinson et al's* disclosure, one of ordinary skill in the art would not have been motivated to combine such document with the secondary applied art in the manner suggested by the Patent Office. Doing so would have been in complete contradiction with the express admonitions and teachings of *Hankinson et al*.

For at least the above reasons, it is apparent that the claims as amended are non-obvious over the applied art. Accordingly, withdrawal of the above §103(a) rejection is respectfully requested.

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such action is earnestly solicited.


If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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